

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1959 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

MUNICIPAL CORPORATION OF THE CITY OF RAJKOT

Appearance:

MR KS JHAVERI for Petitioner
Sr. counsel Mr. Bhaskar Tanna with Ld. counsel Mr.
A.K. Clerk for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 21/12/1999

ORAL JUDGEMENT

Per: M.R. Calla, J:-

1. The petitioner - Gujarat State Road Transport Corporation has filed this petition for quashing and setting aside the Bill No. 116524 dated 1-12-1996 served on 25-1-1997, a copy of which has been annexed as Annexure-B; and a direction is sought to restrain respondent Municipal Corporation from recovering the amount of tax. It is not in dispute that the Municipal Corporation had issued the bill for the year 1994-95 and 1995-96 on 15-3-1996, keeping open the file of the petitioner Corporation for the year 1993-94. It is also the case of the petitioner Corporation that it paid the tax for an amount of Rs.64,802/- for the year 1995-96 on 21-3-1996. On 22-3-1996 the respondent Municipal Corporation issued special notice under Rule 15 (2) and 20 (2) to the petitioner Corporation for municipal valuation of different premises leased by the petitioner Corporation to different occupiers. This notice was issued for different years w.e.f. 1-4-1984.

2. The petitioner Corporation filed its objections on 3-4-1996 and on 29-11-1996. The Tax Recovery branch of the respondent Corporation issued notice assessing the annual letting value at Rs.3,64,980/-. On 27-12-1996 petitioner Corporation filed a Municipal Appeal No. 72/96 before the Civil Judge (S.D.) Rajkot against the show cause notice issued on 29-11-1996. On 27-12-1996 Civil Judge (S.D.) Rajkot issued an order in favour of the petitioner Corporation, on the condition that 75 % of the tax will be paid within fifteen days to the respondent Corporation. On 3-11-1997 petitioner Corporation issued a cheque as per the order passed by the Civil Judge (SD.) Rajkot on 27-12-1996 and the receipt of amount of Rs.73,999/- was issued by the respondent Corporation. On 28-1-1997 respondent Corporation issued a demand notice for House tax, water tax etc. for an amount of Rs.1,11,600/- and thereafter a bill for an amount of Rs.23,59,570/- revising the assessment of the petitioner Corporation right from 1-4-1984 was issued.

3. At this juncture the present Spl.C.A. was filed by the petitioner Corporation on 4-3-1997. On 5-3-1997 notice was issued and ad-interim relief was granted in terms of Para - 6 (B) of the petition. Thereafter on 10-2-1998 when rule was issued by this Court, the

Division Bench passed an order confirming ad-interim relief, subject to the condition that a sum of Rs.3-00 lacs shall be deposited in this Court by the petitioner Corporation within six weeks, and on such deposit being made, the Registry shall invest the same in a deposit with a nationalised bank for a period of three years.

4. Now, when the matter came up before us, on behalf of the respondent Corporation Mr. Tanna raised an objection that the petitioner has a statutory remedy of filing appeal under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949, and therefore this writ petition cannot be entertained. Mr. Tanna also submitted that this petition under Article 226 has been filed only to avoid payment of 75 % of the assessed amount as required by the proviso under Section 406 of the Act. Mr. Zhaveri for the petitioner Corporation has submitted that, there is no question of reassessment for the years 1984-85 onwards upto year 1997 and that, there is no question of revising the assessment as the same has already been made for the respective years, and since the assessment is without jurisdiction; the present Spl.C.A. may be allowed and that the remedy of appeal is no bar.

5. We have heard Ld. counsel. There can not be two opinions that availability of an alternative remedy is not a bar as such to exercise of power under Article 226 and 227 of the Constitution of India, but in such cases the statutory provisions cannot be given a go bye, more particularly when the remedy of statutory appeal is coupled with the proviso requiring that, at the time of filing the appeal the amount as per assessment is to be deposited atleast to the extent of 75 %, subject to the order by the Appellate Court about rest of the 25 percent. In such cases if the petitions are entertained the remedy of filing of appeal will become otiose and in every case aggrieved party would avoid payment of assessed amount and the remedy of appeal will be obviated, and the purpose of provision under section 406 would be defeated causing prejudice to the tasks undertaken by the concerned Municipal Corporation. We therefore find that, it is not a fit case in which this Special civil application should be entertained in face of the clear cut provision of Section 406 under Bombay Provincial Municipal Corporations Act, which provides an efficacious and adequate remedy under law. Before the appellate authority all sorts of objections, including objection to the jurisdiction which has been sought to be raised before us could be raised, and therefore the preliminary objection raised by Mr. Tanna on behalf of respondent Corporation is hereby sustained.

6. Mr. Tanna has made a candid statement that, in case the petitioner Corporation prefers appeals against the assessment pertaining to each year, under Section 406 before the appellate authority, the prayer of condonation of delay would not be opposed by the respondent Municipal Corporation, and the respondent Municipal Corporation would also not oppose the petitioner Corporation's claim for concession about depositing the dues upto 25 % of the amount, as may be considered proper and allowed by the appellate authority.

7. Mr. Zhaveri submits that separate appeals for respective years shall be filed within a period of six weeks from today. On the request of Mr. Zhaveri it is also made clear that, it will be open for the petitioner Corporation to make a request before the appellate authority that in case the appeal succeeds, the amount will be returned with interest within a stipulated time and in case any such request is made by the petitioner Corporation, the appellate authority shall consider and decide the same in accordance with law. The amount of Rs.3-00 lacs (Rs. Three lacs only) which has been deposited and is lying as deposit under Court's order dated 10-2-1998 shall be immediately paid to the respondent Corporation, and this amount shall be adjusted against the amount of assessment payable by the petitioner Corporation, subject to the decision of the appeal. Mr. Zhaveri further makes a statement that the amount required to be deposited in terms of proviso to Section 406 of the Act will be deposited as per the directions of the appellate authority. The interim relief granted by this Court shall remain in force only for a period of six weeks from today, and thereafter any orders passed by the appellate authority shall hold the field. This Special Civil Application therefore fails, and subject to the clarifications, statements and observations as above the rule is hereby discharged. No order as to costs. Direct service permitted.

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